IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVISION No. 596 of 2003

MANGI LAL
V/S
RAM LAL

Mr. TRIBHUVAN GUPTA, for the appellant / petitioner

Mr. BK VYAS, for the respondent

Date of Order : 2.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This second appeal was filed by the appellant, against the judgment and decree of the learned Appellate Court dated 5.12.2001. However, in view of the valuation of the suit, vide order dated 5.5.2003, it was converted into revision.

The facts of the case are, that the respondent filed a suit on 22.7.1986, for recovery of a sum of Rs.6500/-, alleging inter-alia, that on 8.7.83, a sum of Rs.3500/- was borrowed by the defendant, with the stipulation, that it will be refunded on 24.7.83, otherwise he would mortgage by way of usufructory mortgage his agricultural lands situated in Thikaria, and will also pay the share of the crop. It was alleged, that since the defendant neither refunded the amount, nor executed mortgage deed, nor delivered possession, nor paid any share

of the crop, while the share of the crop, according to the plaintiff, comes to Rs.500/- per crop, therefore, Rs.3000/- has been claimed as a share of the crop of three years, and claiming principal amount of Rs.3500/-, suit has been filed for Rs.6500/-.

The learned trial Court, while deciding issue No.2, did find the defendant to have borrowed Rs.3500/-. Then while deciding issue No.3, it was found that it was not decided, as to what would be the extent of the share of the crop, and deciding issues No.4 and 13 together, it was found that the plaintiff is entitled to a total sum of Rs.500/- by way of share of the crop. Then issue No.12 was decided against the plaintiff, and on account of the plaintiff not having any Money Lending License, and having not complied with provisions of Section 22 and 23 of the Money Lenders Act, the suit was dismissed.

Aggrieved, the plaintiff filed appeal, and by the impugned judgment and decree, the learned lower Appellate Court found, that the amount was advanced for the purpose of business, and interpreting the provisions of Section 22, 23 and 26 also, it was found, that the entire suit could not be dismissed. Thus, the finding on issue No.12 was set aside, however, maintaining the findings on other issues, the suit has been decreed in toto, for the entire sum of Rs. 6500/-, alongwith pendente-lite and future interest @

12% per annum.

It is contended by learned counsel for the petitioner, that even on the face of the findings of the learned trial Court on issue No.4 and 13, the decree as passed could not be passed, and is required to be set aside, more so when the learned lower appellate court has also not interfered in those findings.

However, during course of hearing, learned counsel for the respondent agreed, that the plaintiff would be satisfied if the suit for principal amount of Rs.3500/- is decreed, alongwith interest @ 6% per annum, from the date of advancement of loan, till actual repayment. To this submission of the learned counsel, the learned counsel for the petitioner is also agreeable. In my view also, the offer is very fair, and requires to be appreciated.

Accordingly, the revision is partly allowed. The impugned judgment and decree of both the learned Courts below are modified, in the manner, that the plaintiff's suit is decreed for a sum of Rs.3500/-, with interest @ 6% per annum w.e.f. 8.7.83, till actual payment. The plaintiff will also get the cost of the litigation throughout.

(N P GUPTA),J.

/tarun/